

Deborah Gettleman (SBN 267309)
Deepinder Goraya (SBN 290483)
McGUINNESS LAW GROUP, PC
155 Grand Avenue, Suite 900
Oakland, CA 94612
Telephone: (510) 439-2950
Facsimile: (510) 439-2951
Email: dgettleman@mcguinness-legal.com
dgoraya@mcguinness-legal.com

Attorneys for Plaintiffs Samuel Lewis and Patricia Olison

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL LEWIS AND PATRICIA
OLISON

Plaintiffs,

v.

HILLTOP GROUP, L.P.; CIRRUAS ASSET
MANAGEMENT, INC.

Defendants.

CASE NO.

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES**

1. Violation of the Federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.*
2. Violation of the Fair Employment and Housing Act, Cal. Gov't Code § 12955 *et seq.*
3. Violation of California Government Code § 11135
4. Violation of the Unruh Civil Rights Act, Cal. Civil Code § 51 *et seq.*
5. Violation of the Disabled Persons Act, Cal. Civil Code § 54 *et seq.*
6. Breach of the Warranty of Habitability
7. Negligence

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This case concerns the failure to accommodate two residents with physical
3 disabilities, Samuel Lewis and Patricia Olson, by refusing to address the elevator and
4 accessibility issues throughout their apartment complex. Defendants are Hilltop Group, L.P., the
5 corporate owners, and Cirrus Asset Management, Inc., the management company of Heritage
6 Park at Hilltop Apartments (“Heritage Park”), a large senior apartment complex in Richmond,
7 CA.

8 2. Defendants advertise Heritage Park as an affordable senior community with
9 amenities such as an elevator, on-site management, laundry facilities, pool, and fitness center all
10 as part of a gated community. In reality, the complex is neglected, the gates are often left open,
11 permitting anyone to enter off the street, the elevators often malfunction or do not work at all, and
12 on-site management does not want to be bothered-leaving senior tenants, particularly those with
13 disabilities, stranded and vulnerable.

14 3. Both Plaintiffs have suffered due to Defendants’ persistent failure to make their
15 premises safe and accessible and refusal to grant reasonable accommodation requests. By this
16 action, Plaintiffs seek the Court’s assistance in forcing Defendants to live up to their
17 responsibilities under federal, state and local disability laws. Plaintiffs also seek compensatory,
18 statutory and punitive damages, as well as reasonable attorney fees, for the discrimination they
19 have been forced to endure at the hands of Defendants.

JURISDICTION AND VENUE

20
21 4. This Court has jurisdiction over Plaintiffs’ claims brought under federal law
22 pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs’ state law
23 claims pursuant to 28 U.S.C. § 1367. The state law claims are so related to the federal action that
24 they form part of the same case or controversy and the actions would ordinarily be expected to be
25 tried in one judicial proceeding.

26 5. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on
27 the fact that the real property which is the subject of this action is located in this District and that
28 Plaintiffs’ causes of action arose in this District.

PARTIES AND THE PROPERTY

6. The property, known as Heritage Park at Hilltop (“Heritage Park”), is a 192-unit, three-story residential apartment complex located in Richmond, California. It receives a State subsidy in the form of Low-Income Housing Tax Credits, which ensures a certain portion of apartments at Heritage Park remain available for lower-income households.

7. Heritage Park is comprised of three L-shaped buildings, each with a single elevator. The first building contains the “A” and “B” apartments (the “A/B Building”). The second building contains the “C” and “D” apartments (the “C/D Building”). The third building contains the “E” and “F” apartments (the “E/F Building”).

8. Plaintiff Samuel Lewis has been a tenant at Heritage Park at all times relevant to the Complaint, and lives on the second floor of the C/D Building.

9. Mr. Lewis is a person with a disability within the meaning of the federal Fair Housing Act. 42 U.S.C. Section 3602(h). He has a physical impairment that limits one or more major life activities.

10. Mr. Lewis has medical conditions that substantially limit his daily activity of walking. He uses a scooter for mobility most of the time, and at other times uses a cane. He is easily fatigued with physical exertion and is in constant pain due to his medical conditions.

11. Without access to a working elevator, it is extremely difficult for Mr. Lewis to get to his apartment unit or to the building exit independently and safely. He can use the stairs only with great difficulty. He must lean his full weight on both arms, which he places on either side of the stair railing, to lift himself down each step, and then either pull himself up each step or sit on his bottom and scoot up each step. This puts a lot of weight on his arms and makes him very tired and weak. He has to recover for up to an hour after going down the stairs.

12. Plaintiff Patricia Olson has been a tenant at Heritage Park Apartments at all times relevant to the complaint, and lives on the second floor of the C/D Building.

13. Ms. Olson is a person with a disability within the meaning of the federal Fair Housing Act. 42 U.S.C. Section 3602(h). She has physical impairments that limit one or more major life activities.

1 January 19, 2023 and nine items were identified as being non-compliant. The records show that
2 no permit was issued, and would not be issued, until these items were corrected.

3 23. Elevator records show that on April 26, 2023, an order was issued prohibiting use
4 of the elevators in all three buildings due to non-compliance with preliminary safety orders.
5 Records further show that these elevators did not have a valid safety permit and should not have
6 been operating.

7 24. Elevator records show that the elevators in all three buildings continued to operate
8 without a valid safety permit as late as November 22, 2023.

9 25. Elevator records show that the elevators in all three buildings finally became
10 compliant on December 28, 2023, almost a year from when the order prohibiting use was issued.

11 26. On January 9, 2024, the elevator in the C/D Building was again out of service for
12 three days, until January 12. Ms. Olson had run out of food and had no choice but to take the
13 stairs down to get essential groceries. After returning, she had to be helped up the stairs by
14 maintenance because of her knee and back pain. Ms. Olson was in agonizing pain at each step.

15 27. From January through June of 2024, the elevator in the C/D building was
16 inoperable for at least four to five days each month.

17 28. In mid-February of 2024, the elevator in the C/D Building trapped Mr. Lewis and
18 another tenant inside. Mr. Lewis becomes claustrophobic in confined spaces, and being trapped in
19 the elevator made him panicky and anxious. Mr. Lewis was only able to get out of the elevator
20 when another tenant, who happened to push the elevator button from the outside, opened the outer
21 doors.

22 29. In March of 2024, Mr. Lewis was again trapped in the elevator for over twenty
23 minutes. It was the weekend. Mr. Lewis pushed the emergency button and it did not work, and the
24 panel swung open. He then called the on-site resident manager, Lois Tarpeh, as he was instructed
25 to do for emergencies. She sounded annoyed to get his call. She called Maintenance to get him
26 out. Maintenance pushed the elevator button from the outside and the door opened. After this
27 incident, Mr. Lewis received a text from Ms. Tarpeh telling him to just call Maintenance in the
28 future, implying that he should not call her.

1 30. In or around mid-April of 2024, Mr. Lewis and Ms. Olison, along with another
2 resident, noticed that the elevator was out again. Mr. Lewis could not get up the stairs, and had to
3 wait in the community room for two hours until the elevator was repaired. Mr. Lewis reported
4 this to the management office and submitted a repair request. Ms. Olison could not get to the
5 second floor and had to climb the stairs with assistance from a Maintenance worker. She was so
6 exhausted from this effort that she had to rest for an hour before she could report this incident to
7 management. Management responded and said they were aware, and would repair the elevator as
8 soon as possible.

9 31. The elevator in the C/D Building went out again the very next day when Mr.
10 Lewis and Ms. Olison attempted to use it. They were trapped in the elevator yet again, and had to
11 pry open the inner doors to release the mechanism to open the outer doors.

12 32. In late June of 2024, management sent notices to residents stating that the
13 elevators in all three buildings would simultaneously be out of service. They did not specify a
14 duration. In fact, the elevators were out for approximately two weeks (referred to hereinafter as
15 “the two-week period.”)

16 33. During the two-week period, tenants were stuck in their units and had to rely on
17 maintenance, and eventually the fire department, for assistance climbing up and down the stairs.

18 34. During the two-week period, Mr. Lewis had to leave his apartment to get essential
19 groceries. He was forced to painfully go down the stairs, as he had to put both of his arms on
20 either railing and support his weight on them to go down each step. To go back up the stairs, he
21 had to scoot up the stairs on his bottom, pulling himself up each step with his arms. It took him 35
22 minutes to go up the stairs. He was so exhausted by this effort and in pain, that for the rest of the
23 two-week period, Mr. Lewis remained in his apartment, unable and afraid to leave.

24 35. In early July of 2024, Mr. Lewis was again stuck in the elevator. This time in the
25 A/B Building, along with another tenant, for an hour and a half. Mr. Lewis again became
26 claustrophobic and banged on the door. The doors only opened after another tenant eventually
27 came by and opened the outer doors.

28 36. Plaintiffs have friends in the A/B building and would like to return to visit them

1 but is afraid of getting trapped in the elevator again.

2 37. Both Plaintiffs are on the tenant association counsel at Heritage Park and
3 frequently deliver food and packages and check in on fellow tenants in all three buildings. Mr.
4 Lewis's mother lives in the E/F building and he visits her multiple times a week.

5 38. In August of 2024, Ms. Olson was again unable to use the elevator when trying to
6 get to the second floor in the C/D Building. She was only able to get up the stairs with assistance
7 from management.

8 39. Neither Plaintiff can use the stairs without risking injury and fatigue and enduring
9 extreme pain. During elevator outages, each are trapped in their apartments, while tenants without
10 physical disabilities can use the stairs to come and go.

11 40. Defendants advertise Heritage Park as a complex for 55+ seniors. The elevator
12 outages and Defendants' refusal to repair the elevator ignores the physical limitations of their
13 resident tenants and puts them at risk of injury.

14 41. Defendants did not offer alternative accessible accommodations to tenants they
15 knew were disabled and unable to safely climb or descend the stairs.

16 42. Plaintiffs Lewis and Olson have reported the elevator outages both verbally and in
17 writing to both the corporate office and to management several times. Mr. Lewis submitted
18 several elevator repair requests in 2024 alone, including in June and July. In his June 8, 2024
19 repair request, he stated that he and other residents need the elevators to be reliable for scooter
20 and wheelchair access, and that he could not "crawl" up the stairs anymore. In his July 14, 2024
21 request, he reported that the elevator car doors were "acting up again" and that he was missing an
22 important doctor's appointment and could not "afford to get stuck." To all of these requests,
23 management has simply responded that they are "looking into it" but have failed to maintain the
24 elevators in continuous working and safe order.

25 43. Tenants have also met with Management several times individually and at
26 community meetings about the elevator and security issues at Heritage Park

27 44. For the duration of each elevator outage, Defendants never contacted Plaintiffs to
28 ensure they were safe in their homes.

1 45. While the elevators have been inoperable, Defendants have failed to offer
2 relocation assistance or other accommodations to Plaintiffs to access the outside world. Only
3 recently did Defendants notify Heritage Park tenants that they may be required to temporarily
4 relocate while they complete elevator repairs, with housing provided and reasonable out-of-
5 pocket expenses paid for.

6 46. Plaintiffs first received a notice from Management on December 5, 2024 stating
7 that modifications would be made to the elevators on January 9, 2025 and would take 23 days.
8 They also had a meeting on December 9, 2024 at which Management discussed relocating
9 residents while the elevators were repaired. But no immediate action was taken.

10 47. Plaintiffs received another notice on January 6, 2025 stating that the elevators
11 would be undergoing rehabilitation in the near future.

12 48. Plaintiffs then received a notice of non-displacement on January 13, 2025 stating
13 that residents would be relocated for 30 days if they wished, while the elevators were undergoing
14 a rehabilitation. They attended a community town hall meeting on January 15, held by
15 management, where the elevator rehabilitation and temporary relocation were discussed in more
16 detail.

17 49. Mr. Lewis signed his relocation notice and submitted his paperwork on January
18 22, 2025.

19 50. Ms. Olson signed her relocation notice and submitted her relocation paperwork on
20 February 13, 2025.

21 51. Neither Plaintiff has received further communication with Defendants since submitting
22 their relocation paperwork about when they will have to relocate or where to.

23 DENIAL OF REASONABLE ACCOMMODATION-LACK OF KEY FOB ACCESS

24 52. In January of 2025, management reclaimed all Heritage Park tenant key fobs to
25 reprogram. During this reprogramming, management rescinded Mr. Lewis's access to the side
26 door of his building, which is closer to his unit. He can now only enter through the back door of
27 the C/D building, which is 80 feet further from his designated parking spot. Mr. Lewis is forced
28 to maneuver the entire way around the building to enter through this back door.

1 53. Mr. Lewis has requested access to all entrances to his building (something he had
2 access to previously) at least once a month since October of 2024. Each time, management has
3 simply stated they are “working on it.” However, Management has been working on
4 reprogramming the key fobs for at least five months now.

5
6 DEFENDANTS HAVE COMPROMISED THE SAFETY OF PLAINTIFFS AND OTHER
7 DISABLED TENANTS AT HERITAGE PARK

8 54. Defendants have compromised the safety of Heritage Park residents, including
9 Plaintiffs, by not taking proper security measures. The complex is in a dangerous neighborhood
10 surrounded by a gate that opens with a Heritage-Park issued fob. However, these gates are often
11 left open during the day by management. At one point, Ms. Olson confronted a manager about
12 the open gates, and expressed that they should be closed, as it was a security concern. The
13 manager told her that the gates were intentionally left open for UPS, even though UPS drivers had
14 their own fob to open the gates.

15 55. The lack of security enforcement has led to an environment of theft and vandalism
16 at Heritage Park. Homeless individuals often wander into the complex. Ms. Olson has had items
17 stolen from her vehicle on multiple occasions, including the catalytic converter. Tenants,
18 including Plaintiffs, who are already vulnerable due to their disability and/or age, are in constant
19 fear for their safety.

20
21 DEFENDANTS ARE SERIAL VIOLATORS OF THEIR DISABLED TENANTS’ HOUSING
22 RIGHTS

23 56. Defendants have been on notice of the access, maintenance and safety issues with
24 the Heritage Park elevators and the complex since August of 2021, when a previous lawsuit with
25 almost identical claims, was filed. Despite promising regular maintenance and security protocol
26 in order to settle that lawsuit, they have intentionally neglected regular maintenance and repairs.

27 57. In the 2021 lawsuit, four different tenants (Diane Holden, Betty Joubert, Audrey
28 Jenkins, and Robin Lape) sued Defendant Hilltop Group and its former property management

1 company, USA Properties Fund, Inc., for failure to maintain these same elevators and for
2 neglecting important security measures at the complex. Ms. Holden, who has physical limitations
3 like Plaintiffs, fell down the stairs sustaining significant personal injury when she was forced to
4 try to climb the stairs back up to her unit during an elevator outage. Litigation resulted in a court
5 enforceable settlement agreement (“CESA”) on October 3, 2022. *Diane Holden et al. v. Hilltop*
6 *Group, L.P. et al., CASE NO. 21-cv-06000-DMR.*

7 58. Under the CESA, Defendants were to ensure preventative monthly maintenance of
8 the elevators at Heritage Park by a reputable third-party elevator service company. This
9 maintenance was to include monthly elevator inspections, provision of on-call technicians
10 available at all times including evenings and weekends, and ongoing compliance with all
11 applicable elevator safety orders, including ANSI standards for lifts and conveyances.

12 59. The CESA also required Defendants to do the following:

- 13 a. hold quarterly meetings with tenants to be attended by an employee at the
14 regional manager level or above;
- 15 b. conduct annual trainings of all staff and managers who interact with tenants
16 and applicants on how to receive and respond to reasonable accommodation
17 requests;
- 18 c. notify tenants about the length of any planned elevator service interruption;
- 19 d. plan a means for safe exit and entry of the building by tenants during an
20 extended unplanned elevator outage;
- 21 e. Provide a standing security guard for eight hours between the hours of 5 PM
22 and 9 AM on two random nights per week; and
- 23 f. Provide a courtesy patrol five nights per week during the hours of 5 PM to 9
24 AM who will walk the property four times per night to ensure all exterior gates
25 and doors are closed, and to direct any trespassers off the property.

26 60. Defendants have failed to comply with these terms. Specifically, they have not
27 held planned quarterly meetings with tenants, have not notified tenants about the length of any
28 planned elevator service interruption, have not planned a means for safe exit and entry of the

1 building by tenants during extended unplanned elevator outages, there is no security guard on two
 2 random nights a week and there is no courtesy patrol five nights a week. Despite agreeing to its
 3 terms, Defendants intentionally refused to comply with the CESA.

4
 5 **FIRST CAUSE OF ACTION:**
 6 **VIOLATION OF THE FEDERAL FAIR HOUSING ACT**
[42 U.S.C. § 3601 et seq.]

7 61. Plaintiffs incorporate by reference the preceding paragraphs.

8 62. The federal Fair Housing Act (FHA) makes it unlawful for a housing provider
 9 “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a
 10 dwelling, or in the provision of services or facilities in connection with such dwelling, because of
 11 a handicap of that person; or a person residing in or intending to reside in that dwelling after it is
 12 sold or made available; or any person associated with that person.” 42 U.S.C. § 3604(f)(2); 24
 13 C.F.R. § 100.202(b).

14 63. Discrimination under the FHA includes “a refusal to make reasonable
 15 accommodations in rules, policies, practices, or services, when such accommodations may be
 16 necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. §
 17 3604(3)(B); 24 C.F.R. § 100.204(a).

18 64. Discrimination under the FHA also includes “[f]ailing or delaying maintenance or
 19 repairs of sale or rental dwellings because of ...handicap.” 24 C.F.R. § 100.65(b)(2).

20 65. Defendants are multifamily housing providers subject to the FHA.

21 66. Plaintiffs are qualified individuals with disabilities within the meaning of the FHA.
 22 42 U.S.C. §3602(h).

23 67. Defendants knew of Mr. Lewis’s disabilities. First, they are obvious. Second,
 24 Heritage Park management had copies of Mr. Lewis’s medical imaging records on file showing
 25 his medical diagnosis and mobility issues. Despite this, management also requested an updated
 26 “accommodations packet” from Mr. Lewis around April or May of 2024, wherein Mr. Lewis
 27 signed a waiver releasing his medical records to Management.

28 68. Defendants knew of Ms. Olson’s disabilities. They are obvious and she had

1 already submitted verifications of her disability with management in 2023.

2 69. Defendants' actions and omissions discriminate against Plaintiffs solely because of
3 their disability in violation of the FHA. Defendants discriminatory conduct includes but is not
4 limited to:

- 5 a. Failing to make their premises accessible to and usable by tenants with
6 disabilities;
- 7 b. Repeatedly failing or delaying maintenance and repairs of the elevators,
8 which is the sole manner of ingress and egress to many tenants with
9 physical disabilities above the first floor;
- 10 c. Failing to implement lawful reasonable accommodation policies, notice
11 policies, and emergency evacuation policies;
- 12 d. Failing to make reasonable modifications to policies and procedures
13 where necessary to provide disabled tenants full and equal enjoyment
14 of the premises ;
- 15 e. Failing to ensure that Plaintiffs and others similarly situated have equal
16 access to their housing when the elevators go out of service;
- 17 f. Failing to construct and maintain accessible features; and
- 18 g. Maintaining a policy requiring Plaintiffs to use the stairs if the elevators
19 are out of service.

20 70. Defendants' violations of the FHA are ongoing. They have harmed and will
21 continue to harm Plaintiffs in the future.

22 71. Defendants' actions demonstrate a knowing and conscious disregard for the rights
23 of disabled tenants. Such conduct justifies an award of punitive and exemplary damages in
24 addition to all other relief sought.

25 72. Plaintiffs suffered actual harms and losses including but not limited to physical
26 and mental pain, fear, degradation, and emotional distress because of the discrimination that they
27 each experienced .

28 73. Plaintiffs Lewis and Olson's harms and losses are ongoing so long as Defendants

do not modify their policies and procedures and provide fully accessible and safe facilities for Plaintiffs and other persons with mobility disabilities.

74. Plaintiffs have no adequate remedy at law to compensate them for their lost opportunities of equally and fully enjoying the housing amenities for which they pay. Plaintiffs therefore seek an order enjoining Defendants to make the required repairs and grant the necessary reasonable accommodations in order to allow them equal access to Heritage Park's amenities, and an order enjoining Defendants to take adequate steps to prevent any such discrimination in the future.

WHEREFORE, Plaintiffs request relief as outlined below.

**SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT
[Cal. Government Code § 12900 *et seq.*]**

75. Plaintiffs incorporate by reference the preceding paragraphs.

76. The California Fair Employment and Housing Act (FEHA) makes it unlawful "[f]or any person subject to the provisions of the [Unruh Civil Rights Act] section 51 of the Civil Code ... to discriminate against any person" on any basis protected under FEHA. Cal. Gov't Code § 12955(d).

77. Defendants are multifamily housing providers subject to FEHA.

78. Plaintiffs are individuals with disabilities within the meaning of FEHA.

79. Defendants' actions and omissions discriminate against Plaintiffs solely because of their disability in violation of FEHA. Defendants discriminatory conduct includes but is not limited to:

- a. Failing to make their premises accessible to and usable by tenants with disabilities;
- b. Repeatedly failing or delaying maintenance and repairs of the elevators, which is the sole manner of ingress and egress to many tenants with physical disabilities above the first floor;
- c. Failing to implement lawful reasonable accommodation policies, notice

1 policies, and emergency evacuation policies;

- 2 d. Failing to make reasonable modifications to policies and procedures
3 and reinstate key fob access to all previously accessible entrances to
4 Plaintiffs' building, including entrances closest to their apartment units;
5 e. Failing to ensure that Plaintiffs and others similarly situated have equal
6 access to their housing when the elevators go out of service;
7 f. Failing to construct and maintain accessible features; and
8 g. Maintaining a policy requiring Plaintiffs to use the stairs if the elevators
9 are out of service.

10 80. Defendants' violations of FEHA are ongoing. They have harmed and will
11 continue to harm Plaintiffs in the future.

12 81. Defendants' actions demonstrate a knowing and conscious disregard for the rights
13 of disabled tenants. Such conduct justifies an award of punitive and exemplary damages in
14 addition to all other relief sought.

15 82. Plaintiffs suffered actual harms and losses including but not limited to physical
16 and mental pain, fear, degradation, and emotional distress because of the discrimination that they
17 each experienced .

18 83. Plaintiffs Lewis and Olson's harms and losses are ongoing so long as Defendants
19 do not modify their policies and procedures and provide fully accessible and safe facilities for
20 Plaintiffs and other persons with mobility disabilities.

21 84. Plaintiffs have no adequate remedy at law to compensate them for their lost
22 opportunities of equally and fully enjoying the housing amenities for which they pay. Plaintiffs
23 therefore seek an order enjoining Defendants to make the required repairs and grant the necessary
24 reasonable accommodations in order to allow them equal access to Heritage Park's amenities, and
25 an order enjoining Defendants to take adequate steps to prevent any such discrimination in the
26 future.

27 WHEREFORE, Plaintiffs request relief as outlined below.
28

**THIRD CAUSE OF ACTION
VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION 11135**

85. Plaintiffs incorporate by reference the preceding paragraphs.

86. California law affords people with disabilities a right to “equal access” to programs and activities subsidized by state funds; such programs may not discriminate against people with disabilities. Cal. Gov’t Code § 11135(a).

87. State-funded programs may not deny a person the opportunity to participate in, or benefit from, its services and programs. 2 Cal. Code Regs § 11154(a). Such programs must provide effective access that results in an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. *Id.* at § 11154(c). Such programs may not “otherwise limit a person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by” the general public. *Id.* at § 11154(g).

88. Based on a review of public records, Defendants receive financial assistance from the State of California in the form of Low-Income Tax Credits sufficient to invoke the coverage of Government Code Section 11135.

89. At all times relevant to this action, Plaintiffs have been and are qualified individuals with a disability within the meaning of California law. Cal. Gov’t Code § 12926.

90. Defendants’ actions and omissions discriminate against Plaintiffs solely because of their disability in violation of Section 11135 and its regulations. Defendants’ discriminatory conduct includes but is not limited to:

- a. Failing to make their premises accessible to and usable by tenants with disabilities;
- b. Repeatedly failing or delaying maintenance and repairs of the elevators, which is the sole manner of ingress and egress to many tenants with physical disabilities above the first floor;
- c. Failing to implement lawful reasonable accommodation policies, notice policies, and emergency evacuation policies;
- d. Failing to make reasonable modifications to policies and procedures

- and reinstate key fob access to all previously accessible entrances to Plaintiffs' building, including entrances closest to their apartment units;
- e. Failing to ensure that Plaintiffs and others similarly situated have equal access to their housing when the elevators go out of service;
- f. Failing to construct and maintain accessible features; and
- g. Maintaining a policy requiring Plaintiffs to use the stairs if the elevators are out of service.

91. Pursuant to California Government Code § 11139, Plaintiffs have a private right of action to enforce California Government Code § 11135(b).

92. Defendants' violations of California Government Code 11135 are ongoing. They have harmed and will continue to harm Plaintiffs in the future.

93. Plaintiffs Lewis and Olson's harms and losses are ongoing so long as Defendants do not modify their policies and procedures and provide fully accessible and safe facilities for Plaintiffs and other persons with mobility disabilities.

94. Plaintiffs have no adequate remedy at law to compensate them for their lost opportunities of equally and fully enjoying the housing amenities for which they pay. Plaintiffs therefore seek an order enjoining Defendants to make the required repairs and grant the necessary reasonable accommodations in order to allow them equal access to Heritage Park's amenities, and an order enjoining Defendants to take adequate steps to prevent any such discrimination in the future.

WHEREFORE, Plaintiffs request relief as outlined below.

**FOURTH CAUSE OF ACTION:
VIOLATION OF THE UNRUH CIVIL RIGHTS ACT
[Cal. Civil Code § 51 *et seq.*]**

95. Plaintiffs incorporate by reference the preceding paragraphs.

96. The Unruh Civil Rights Act ("Unruh Act") provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their disability [or] medical

1 condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or
2 services in all business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b).

3 97. Defendants are a business establishment in their operation of Heritage Park under
4 the Unruh Act because they are a housing accommodation that provides goods, services and
5 facilities in exchange for money.

6 98. At all times relevant to this action, Plaintiffs have been and are qualified
7 individuals with a disability within the meaning of California law.

8 99. Defendants’ acts and omissions were by reason of Plaintiffs’ disabilities.

9 100. Defendants’ discriminatory conduct includes but is not limited to:

- 10 a. Failing to make their premises accessible to and usable by tenants with
11 disabilities;
- 12 b. Repeatedly failing or delaying maintenance and repairs of the elevators,
13 which is the sole manner of ingress and egress to many tenants with
14 physical disabilities above the first floor;
- 15 c. Failing to implement lawful reasonable accommodation policies, notice
16 policies, and emergency evacuation policies;
- 17 d. Failing to make reasonable modifications to policies and procedures
18 and reinstate key fob access to all previously accessible entrances to
19 Plaintiffs’ building, including entrances closest to their apartment units;
- 20 e. Failing to ensure that Plaintiffs and others similarly situated have equal
21 access to their housing when the elevators go out of service;
- 22 f. Failing to construct and maintain accessible features; and
- 23 g. Maintaining a policy requiring Plaintiffs to use the stairs if the elevators
24 are out of service.

25 101. Defendants’ actions constitute intentional discrimination against Plaintiffs under
26 the Unruh Act because they have actual knowledge that Plaintiffs and other tenants at Heritage
27 Park are persons with mobility disabilities who need accessible features and reasonable
28 accommodations to have equal access to their homes but did nothing to address the issues with

1 the elevator and safety.

2 102. Defendants were sued three years ago on an almost identical set of facts and
3 Defendants represented to the Court that they would cure the elevator outages and safety issues,
4 but did not. Defendants affirmatively decided not to maintain the elevators in proper working
5 order at Heritage Park, despite being on notice for years and receiving numerous preliminary
6 safety orders and an order prohibiting use from Cal OSHA. Defendants failed to conduct
7 quarterly meetings with tenants; failed to be available to Plaintiffs after hours for emergencies;
8 failed to grant Plaintiff Lewis a reasonable accommodation of granting key fob access to all
9 entrances of his building, including to the entrance closest to his unit; failed to implement proper
10 security measures for the complex to prohibit trespassers onto the property; and failed to comply
11 in general with the prior CESA despite being on notice of the harm that was and could continue to
12 befall the elderly residents who live there. Defendants' actions therefore led to the exacerbation of
13 Plaintiffs' physical disabilities.

14 103. Defendants' violations of Unruh are ongoing. They have harmed and will
15 continue to harm Plaintiffs in the future.

16 104. Defendants' actions demonstrate a knowing and conscious disregard for the rights
17 of disabled tenants. Such conduct justifies an award of punitive and exemplary damages in
18 addition to all other relief sought.

19 105. Plaintiffs suffered actual harms and losses including but not limited to physical
20 and mental pain, fear, degradation, and emotional distress because of the discrimination that they
21 each experienced .

22 106. Plaintiffs Lewis and Olson's harms and losses are ongoing so long as Defendants
23 do not modify their policies and procedures and provide fully accessible and safe facilities for
24 Plaintiffs and other persons with mobility disabilities.

25 107. Plaintiffs have no adequate remedy at law to compensate them for their lost
26 opportunities of equally and fully enjoying the housing amenities for which they pay. Plaintiffs
27 therefore seek an order enjoining Defendants to make the required repairs and grant the necessary
28 reasonable accommodations in order to allow them equal access to Heritage Park's amenities, and

1 an order enjoining Defendants to take adequate steps to prevent any such discrimination in the
2 future.

3 WHEREFORE, Plaintiffs request relief as outlined below.

4 **FIFTH CAUSE OF ACTION**
5 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**
6 **[Cal. Civil Code § 54 *et. seq.*]**

7 108. Plaintiffs incorporate by reference the preceding paragraphs.

8 109. The Disabled Persons Act (DPA) states, “Individuals with disabilities shall be
9 entitled to full and equal access, as other members of the general public, to all housing
10 accommodations offered for rent, lease, or compensation in this state, subject to the conditions
11 and limitations established by law, or state or federal regulation, and applicable alike to all
12 persons.” Cal. Civil Code § 54.1(b)(1).

13 110. Heritage Park is a housing accommodation within the meaning of Civil Code
14 section 54.1(b)(2). Plaintiffs are persons with disabilities within the meaning of the DPA. Cal.
15 Civil Code § 54.

16 111. Based upon the foregoing, Defendants have violated the DPA as follows:

- 17 a. Failing to make their premises accessible to and usable by tenants with
18 disabilities;
- 19 b. Repeatedly failing or delaying maintenance and repairs of the elevators,
20 which is the sole manner of ingress and egress to many tenants with
21 physical disabilities above the first floor;
- 22 c. Failing to implement lawful reasonable accommodation policies, notice
23 policies, and emergency evacuation policies;
- 24 d. Failing to make reasonable modifications to policies and procedures
25 and reinstate key fob access to all previously accessible entrances to
26 Plaintiffs’ building, including entrances closest to their apartment units;
- 27 e. Failing to ensure that Plaintiffs and others similarly situated have equal
28 access to their housing when the elevators go out of service,
- f. Maintaining a policy requiring Plaintiffs to use the stairs if the elevators

are out of service;

g. Failing to construct and maintain accessible features; and

h. Failing to ensure that Plaintiffs and others similarly situated have equal access to their housing.

112. Defendants' violations of the California Disabled Persons Act are ongoing. They have harmed and will continue to harm Plaintiffs in the future.

113. Defendants' actions demonstrate a knowing and conscious disregard for the rights of disabled tenants. Such conduct justifies an award of punitive and exemplary damages in addition to all other relief sought.

114. Plaintiffs suffered actual harms and losses including but not limited to physical and mental pain, fear, degradation, and emotional distress because of the discrimination that they each experienced.

115. Plaintiffs Lewis and Olson's harms and losses are ongoing so long as Defendants do not modify their policies and procedures and provide fully accessible and safe facilities for Plaintiffs and other persons with mobility disabilities.

116. Plaintiffs have no adequate remedy at law to compensate them for their lost opportunities of equally and fully enjoying the housing amenities for which they pay. Plaintiffs therefore seek an order enjoining Defendants to make the required repairs and grant the necessary reasonable accommodations in order to allow them equal access to Heritage Park's amenities, and an order enjoining Defendants to take adequate steps to prevent any such discrimination in the future.

WHEREFORE, Plaintiffs request relief as outlined below.

SIXTH CAUSE OF ACTION TORTIOUS BREACH OF THE WARRANTY OF HABITABILITY

117. Plaintiffs incorporate by reference the preceding paragraphs.

118. A warranty of habitability is implied in every residential lease. *Green v. Superior Court*, 10 Cal. 3d 616, 619-20 (1974) (en banc). The elements of an affirmative claim for tortious breach of the warranty of habitability are: 1) [T]he existence of a material defective condition

1 affecting the premises' habitability, 2) notice to the landlord of the condition within a reasonable
 2 time after the tenant's discovery of the condition, the landlord was given a reasonable time to
 3 correct the deficiency, and 3) resulting damages. *Ghazaryan v. Shabazian*, No.

4 LACV1708245JAKSSX, 2018 WL 6190347, at *5 (C.D. Cal. Aug. 2, 2018), citing *Erlach v.*
 5 *Sierra Asset Servicing, LLC*, 226 Cal. App. 4th 1281, 1297 (2014).

6 119. A broken elevator is a material defective condition that impairs Plaintiffs safe
 7 habitation. Defendants are on actual notice that the elevators in the C/D building and the other
 8 two buildings have been inoperable or not functioning properly for months.

9 120. Further, Defendants failure to address the security issues at Heritage Park when
 10 they know of the dangers posed to the residents there also violates the warranty of habitability.
 11 *See Penner v. Falk*, 153 Cal. App. 3d 858 (1984).

12 121. Defendants' violations of the warranty of Habitability are ongoing. They have
 13 harmed and will continue to harm Plaintiffs in the future.

14 122. Defendants' actions demonstrate a knowing and conscious disregard for the rights
 15 of disabled tenants. Such conduct justifies an award of punitive and exemplary damages in
 16 addition to all other relief sought.

17 123. Plaintiffs suffered actual harms and losses including but not limited to physical
 18 and mental pain, fear, degradation, and emotional distress because Defendants failure to follow
 19 the law.

20 **SEVENTH CAUSE OF ACTION**
 21 **NEGLIGENCE**
[Cal. Civil Code § 1714]

22 124. Plaintiffs incorporate by reference the preceding paragraphs.

23 125. Defendants, as owners and managers of Heritage Park, have a non-delegable duty
 24 to Plaintiffs to ensure a safe path of travel to and from their units and amenities of the property.
 25 Part of this path of travel is an operable elevator.

26 126. Defendants breached this duty by failing to properly maintain the elevators and
 27 repair them in both the normal course of business.

28 127. Further, Defendants have a nondelegable duty to keep the premises safe and

1 habitable for tenants. They have breached this duty by failing to take appropriate action to stem
2 the egregious and pervasive criminal activity that is making Heritage Park a truly dangerous place
3 to live.

4 128. As a direct and proximate result of the negligence of Defendants in failing to
5 maintain the elevators or to maintain any policies related to ensuring a safe path of travel when
6 the elevators are out of order, in addition to refusing to address the crime and danger that has
7 plagued the complex and led to the elevator outages and exacerbation of Plaintiffs' mental health
8 disabilities, Plaintiffs suffered and continue to suffer physical and emotional pain, fear and
9 emotional distress.

10 129. Defendants' refusal to provide disabled tenants with accessible paths of travel
11 including functioning elevators, and address the criminal activity making tenancy at Heritage
12 Park dangerous for Plaintiffs who all have both physical and mental health disabilities,
13 particularly when on actual notice of these issues, demonstrates malice, fraud and oppression and
14 conscious disregard for the law in general and the rights of disabled tenants in particular. Such
15 conduct justifies an award of punitive and exemplary damages in addition to all other relief
16 sought.

17 130. Defendants' negligence is ongoing. They have harmed and will continue to harm
18 Plaintiffs in the future.

19 131. Defendants' actions demonstrate a knowing and conscious disregard for the rights
20 of disabled tenants. Such conduct justifies an award of punitive and exemplary damages in
21 addition to all other relief sought.

22 132. Plaintiffs suffered actual harms and losses including but not limited to physical
23 and mental pain, fear, degradation, and emotional distress because of Defendants negligence.
24

25 **PRAYER**

26 WHEREFORE, Plaintiffs pray for judgment and the following specific relief against
27 Defendants:

28 1. Under the First through Fourth and Fifth and Sixth Causes of Action, for an order

enjoining Defendants, their agents, officials, employees, and all persons acting in concert with them:

- a. From continuing the unlawful acts, conditions, and practices described in this Complaint;
 - b. To maintain Heritage Park's accessible features, including its elevators, so that they are useable by all persons with physical disabilities;
 - c. To implement security measures at Heritage Park;
 - d. To train each of Defendants' employees and agents in accommodating the rights and needs of disabled persons;
 - e. To implement nondiscriminatory protocols, policies, and practices for accommodating persons with disabilities; and
 - f. To fully comply with the CESA from the *Holden v. Hilltop Group* lawsuit; and
2. Plaintiff does not seek injunctive relief under Cal. Civ. Code § 55.
 3. That the Court retain jurisdiction over the Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, as complained of herein no longer occur, and cannot recur;
 4. Award to Plaintiffs all appropriate damages, including but not limited to statutory damages, general damages, treble damages and punitive damages in amounts within the jurisdiction of the Court, all according to proof;
 5. Award to Plaintiffs all reasonable statutory attorney fees, litigation expenses, and costs of this proceeding as provided by federal and state law;
 6. Grant such other and further relief as this Court may deem just and proper.

Dated: April 16, 2025

McGUINNESS LAW GROUP, PC

/s/ Deepinder Goraya
By Deepinder Goraya
Attorneys for Plaintiffs

DEMAND FOR JURY

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: April 16, 2025

McGUINNESS LAW GROUP, PC

/s/ Deepinder Goraya

By Deepinder Goraya
Attorneys for Plaintiffs